IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1st AGRAHAYANA 1929

WP(C).No. 34488 of 2007(E)

AGAINST THE ORDER IN EA.613/07EP.262/04 IN
OS.472/2001 of PRINCIPAL SUB COURT,Thiruvananthapuram
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PETITIONER:

SUKUMARI AMMA, RESIDING AT LEKHAS,
T.C. 50/1860,KALADY, KARAMANA,
THIRUVANANTHAPURAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS:
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1. BANK OF INDIA,PUTHENCHANTHAI BRANCH
THIRUVANANTHAPURAM, REPRESENTED BY ITS
BRANCH MANAGER.

2. MANJU JAYACHANDRAN, LEKHAS,
T.C. 50/1860. KALADY, KARAMANA, T
THIRUVANANTHAPURAM.

3. S.JAYACHANDRAN,RESIDING AT
LEKHAS,T.C. 50/1860. KALADY, KARAMANA,
THIRUVANANTHAPURAM.

4. M.MADHAVAN NAIR,S/O.KRISHNAN
T.C. 7/1982/2, UTHRAM BUILDING, PANGODE
THIRUMALA P.O.

5. S.SREEKUMAR,'AGARAGE' VPS 314
VATTAVILA, THIRUMALA P.O., THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34488 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Subordinate Judge, Thiruvananthapuram in E.A.No.613/07 in E.P.262 of 2004 in O.S.No.472 of 2001. The said application is filed with a prayer to set aside the sale. The auction purchaser purchased the property on 28.6.2006 and deposited 25% of the purchase money. It is submitted that the decree holder filed E.A.No.850 of 2006 for extension of time and it was allowed for depositing the amount. Thereafter, the sale was confirmed, sale certificate was issued and now it is in the stage of delivery of the property. At this stage, it is submitted that there is violation of Order 21 Rule 85 of C.P.C. and therefore sale has become void on account of non-compliance of the statutory requirements. A decision was also cited before the Subordinate Judge rendered by this Court in **Kadeeja** v. **Chandrika** - 2005(1) K.L.T. 434. The learned Subordinate Judge did not seriously look into that judgment at all and held that the prayer cannot be allowed and dismissed the E.A.

2. Under Order 21 Rule 85 of C.P.C. full amount of purchase money payable shall be paid by the purchaser in the court before the court closes on the 15th day from the sale of the property.

So there is a statutory requirement for deposit of the balance amount within 15 days. The Apex Court in the decision reported in **Gangabai Gopaldas Mohata** v. **Fulchand** - A.I.R. 1997 S.C. 1812 held as follows: "Non-complance of Rr 84 and 85 in the matter of deposit of sale amount - sale is rendered void." It has been considered by the Apex Court in paragraph 15 of the said decision. In the decision cited before the court below also this Court has held that provisions are mandatory and failure to deposit the balance purchase money within the statutory period of 15 days will result in the cancellation of the sale itself. It was a case where there was a strike by the Government employees and there was inability for the court to accept. But the petitioner in that case approached the court and tendered the amount and on account of the nonavailability of staff, he could not receive it. So, the court considered it as a ground to receive it on the next day. It is on the principle that when the court is closed on the 15th day it can receive it on the next working day and applying that principle the amount was received. But this Court clearly reiterated the position that the amount has to be deposited within the statutory period and non-deposit will lead to rendering the whole sale void. Unfortunately, the learned Subordinate Judge has not adverted to any of these legal provisions or decisions and had casually disposed of the execution application. It has resulted in gross injustice, which requires interference.

3. Therefore, I set aside the order and the matter is remitted back to the Executing Court for fresh consideration in

the light of the decisions referred to above. Since I am disposing of the matter at the admission stage itself, the court shall fix a date of appearance for the decree holder and dispose of the matter in accordance with law. The writ petitioner is directed to appear before the court below on 17.12.2007. In the light of my judgment the Executing Court shall defer the delivery till a final decision is taken in the matter after hearing both sides.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 22/11